



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 31 2003

VIA FEDERAL EXPRESS

Abraham Roth, Treasurer
Dear 2000, Inc.
c/o Roth & Company, LLP
5612 18th Avenue
Brooklyn, New York 11204

RE: MUR 5180
Dear 2000, Inc.

Dear Mr. Roth:

On March 12, 2001, the Federal Election Commission notified Dear 2000, Inc. ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information obtained during its investigation, the Commission, on March 21, 2003, found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

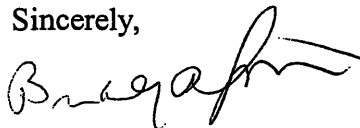
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Danita C. Lee, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Vice Chairman

Enclosure

Factual and Legal Analysis

cc: Noach Dear

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR: 5180

RESPONDENT: Dear 2000, Inc., and Abraham Roth, as Treasurer

I. GENERATION OF MATTER

This matter arose from a complaint filed with the Federal Election Commission ("Commission") by Ron Friedman, Chairman of Friends of Weiner, ("Complainant").

III. FACTUAL AND LEGAL ANALYSIS

A. LAW

It is unlawful for a corporation to make a contribution or expenditure, including any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value, in connection with any election to any political office. 2 U.S.C. § 441b. In-kind contributions include advertising services, services offered free of charge and services offered at less than the usual and normal charge. 11 C.F.R. §100.7(a)(1)(iii); *see* 2 U.S.C. § 431(8)(i).

A corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(b). In determining whether credit was extended in the ordinary course of business, the Commission will consider whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit, whether the commercial vendor received prompt payment in full if it previously extended credit to the same

candidate or political committee, and whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c). A corporation may not settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt unless the corporation has treated the debt in a commercially reasonable manner and the requirements of 11 C.F.R. § 116.7 or 11 C.F.R. § 116.8, as appropriate, are satisfied. 11 C.F.R. § 116.4(b).

B. FACTS

The Jewish Press, Inc. provided advertising services to Dear 2000, Inc. ("the Committee"). It appears that a Committee employee authorized the advertisements and that the Jewish Press, Inc. was never paid.

The Committee did not produce any documents in response to the Commission's subpoena and it stated that it lacked sufficient information to identity the individual who arranged purchasing print advertisements for the Committee. The Committee's treasurer, Abraham Roth, testified that he did not have any knowledge of the placement of advertisements in the *Jewish Press*. He testified that the Committee had no records of any payment made to Jewish Press, Inc. for advertisements. Mr. Roth testified that he performed a search of Committee records and that his search did not reveal any invoices. Mr. Roth also testified that he made an inquiry with staff of Jewish Press, Inc. to learn who placed the advertisements, but that the newspaper could not give him an answer because they did not know who requested the advertisements be published. Finally, Mr. Roth testified that he did not specifically ask Jewish Press, Inc. who paid for advertisements and that Jewish Press, Inc. told him only that the

advertisements were unpaid.

The Committee's campaign manager, Harris Leitstein, told the Commission that he authorized the advertisements and that Mr. Roth should have received the invoices through the billing system in place with the Committee. Mr. Leitstein stated that the billing system was set up so that Mr. Roth would have directly received the bills.

The Commission obtained an August 23, 2000 memorandum on the Committee's letterhead from Harris Leitstein to Heshy Korenblit, the *Jewish Press*' Display Advertising Manager, thanking him for placing unspecified advertisements and listing future advertisements. The Commission also obtained an undated set of invoices attached to a September 8, 2000 letter from Mr. Korenblit to "Dear 2000 . . . Attention: Accounts Payable" for six advertisements which ran from August 18, 2000 to September 8, 2000. The invoices totaled \$23,760 after the *Jewish Press* applied unspecified credits totaling \$15,840.¹ The Commission obtained another set of invoices, which were also undated, directed to the Committee from Jewish Press, Inc. for costs associated with a total of seven advertisements run in the newspaper between August 18, 2000 and November 3, 2000, and for which the Committee was billed \$6,600 per advertisement for a total of \$46,200.

C. ANALYSIS

Jewish Press, Inc. never received payment for eight advertisements authorized by the Committee and published in the newspaper between August 18, 2000 and November 3, 2000.

¹ The letter from Mr. Korenblit did not explain the basis for the credits. Mr. Leitstein, the Committee's campaign manager, told the Commission that he did not recall anything about a "discount" for the advertisements. He said that sometimes if ads were paid for upfront they would receive a discount. Nonetheless, the Commission determined that the advertisements were not paid for.

Therefore, the Committee accepted a prohibited in-kind contribution from the Jewish Press, Inc. Jewish Press, Inc. is incorporated in New York and corporations may not contribute, whether directly or indirectly, to election campaigns. 2 U.S.C. § 441b. Jewish Press, Inc. provided advertising services to the Committee in support of candidate Noach Dear's race for election to Congress and the cost of those advertising services were not paid for by or on behalf of the Committee, therefore an in-kind contribution resulted. 2 U.S.C. § 431(8)(i) and 11 C.F.R. § 100.7(a)(1)(iii). Consequently, the Commission finds that there is reason to believe that Dear 2000, Inc., and Abraham Roth, as treasurer, accepted a prohibited contribution from Jewish Press, Inc. in violation of 2 U.S.C. § 441b(a).